

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL DENTON,

Plaintiff,

v.

KARIE RAINER, et al.,

Defendants.

CASE NO. C19-5743 BHS

ORDER

This matter comes before the Court on Plaintiff Michael Denton's Motion for Preliminary Injunction, Dkt. 163, Defendant Karie Rainer's Motion to Exclude Expert Testimony, Dkt. 166, and Defendants Kevin Bowen, Sean Murphy, Michael Obenland, Karie Rainer, Cheryl Strange, and Timothy Thrasher's Motion to Seal,¹ Dkt. 170.

This case has a complex factual and procedural history that was detailed most recently in the Court's Order Rejecting Report and Recommendation, Dkt. 78. It need not be repeated here other than to state that Denton filed his second amended complaint on October 11, 2022. Dkt. 155. The Court has yet to substantively rule on any dispositive

¹ This motion is unopposed and GRANTED. Defendants may file Exhibits 2 and 6 of Feulner's Declaration under seal.

1 motions in this case and the dispositive motions deadline is currently set for March 10,
2 2023—about one month before trial. Dkt. 157.

3 I. DISCUSSION

4 A. Motion for Preliminary Injunction

5 In November, Denton filed his third motion for preliminary injunction. Dkt. 163.
6 He moves the Court (1) to order Defendants to immediately release him from solitary
7 confinement; (2) to prevent Defendants from housing him, or any other inmate, in
8 solitary confinement for more than fourteen consecutive days; and (3) to immediately
9 provide him with necessary mental and behavioral health treatment. *Id.* at 25. Defendants
10 argue² that Denton’s factual testimony is inaccurate and unreliable, that granting this type
11 of “mandatory injunction”—one that does not simply preserve the status quo—would
12 violate Defendants’ right to trial, that Denton has failed to meet the standard for a
13 preliminary injunction, and that the requested injunction is too broad and does not
14 conform with the relief Denton seeks in his complaint. Dkt. 167.

15 The Court concludes that Denton’s motion cannot be decided on the briefing alone
16 and that an evidentiary hearing is necessary. Therefore, the Court will hold a two-day
17 evidentiary hearing on Denton’s preliminary injunction motion on Wednesday, February
18

19 ² Defendants (other than Rainer) also argue that the Court lacks personal jurisdiction over
20 them because they have not been properly served. Dkt. 167 at 10–11. Denton responds that his
21 “understanding” is that Defendants have been served. It is unclear to the Court where the
22 disagreement stems from, but the parties should resolve this issue on their own, without judicial
intervention. The Rule 4(m) period for service expires on Monday, January 9, 2023. The Court
will extend that deadline for an additional thirty days—to Wednesday, February 8, 2023. Denton
is directed to properly serve the remaining Defendants or to reach an agreement with counsel
regarding a waiver.

1 8, 2023, and Thursday, February 9, 2023. Denton's motion, Dkt. 163, shall be
2 RENOTED to the Court's February 9, 2023 calendar.

3 **B. Motion to Exclude**

4 Rainer moves to exclude the expert report of Dr. Anthony Eusanio. Dkt. 166. She
5 argues that his testimony does not meet the standards for expert testimony under Federal
6 Rule of Evidence 702 because he is deceased and therefore will not be available for trial.
7 *Id.* at 2–5. She also argues that Eusanio's report does not and cannot comply with Federal
8 Rule of Civil Procedure 26(a)(2)(B) because the report is unsigned. *Id.* at 5.

9 Denton argues that Rainer's motion is improper as a *Daubert* motion because he is
10 not offering Eusanio as a witness. Dkt. 175 at 1. He argues that it should instead have
11 been brought in a motion in limine, because the real question before the Court is the “to
12 what degree and for what purpose can Dr. Eusanio's report be used at trial.” *Id.* Denton
13 argues that Eusanio's report is relevant to demonstrate that Defendants were on notice
14 that he was being harmed by being placed in solitary confinement. *Id.* at 2. He also
15 argues that Eusanio's qualifications and the authenticity of the report have never been
16 questioned and that the Department of Correction's own mental health professionals have
17 relied on the report. *Id.* Finally, he argues that his retained expert witness, Dr. Terry
18 Kupers, references Eusanio's report extensively, which is permissible in the mental
19 health discipline. *Id.*

20 The Court agrees that, if Denton is not offering Eusanio as a witness, Rainer's
21 motion is moot. FRE 702 and FRCP 26(a)(2)(B) apply only to witnesses. To the extent
22 Defendants would like to exclude or limit Denton's use of Eusanio's report at trial, they

1 should do so in a motion in limine. Rainer's motion to exclude, Dkt. 166, is therefore
2 DENIED.

3 **II. ORDER**

4 Therefore, it is hereby **ORDERED** that Defendant Karie Rainer's Motion to
5 Exclude Expert Testimony, Dkt. 166, is **DENIED**, and Defendants Kevin Bowen, Sean
6 Murphy, Michael Obenland, Karie Rainer, Cheryl Strange, and Timothy Thrasher's
7 Motion to Seal, Dkt. 170, is **GRANTED**. Plaintiff Michael Denton's Motion for
8 Preliminary Injunction, Dkt. 163, is **RENOTED** to the Court's **February 9, 2023**
9 calendar, and an evidentiary hearing on that motion is set for **February 8 and 9, 2023, at**
10 **9:00 AM**. The parties are **ORDERED** to file a Writ for Transfer of Plaintiff so Denton
11 may appear at the hearing live.

12 Dated this 6th day of January, 2023.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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